

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal	)	
Service	)	CC Docket No. 96-45
	)	
American Cellular Corporation Petition for	)	
Agreement in Redefining the Service Area	)	
Requirement for Certain Rural Telephone	)	
Company Study Areas in the State of	)	
Wisconsin pursuant to 47 C.F.R. § 54.207(c)	)	

**PETITION FOR AGREEMENT WITH REDEFINITION OF SERVICE AREA  
REQUIREMENT FOR CERTAIN RURAL TELEPHONE COMPANY STUDY AREAS  
IN THE STATE OF WISCONSIN**

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## **SUMMARY**

This Petition seeks the Commission's concurrence, pursuant to section 54.207(c) of the Rules, with the redefinition of the service area requirement approved by the Public Service Commission of Wisconsin ("Wisconsin PSC") in connection with its grant of eligible telecommunications carrier ("ETC") status to Petitioner American Cellular Corporation ("Petitioner").

In the Wisconsin PSC proceeding, Petitioner sought ETC designation throughout its commercial mobile radio services ("CMRS") licensed service areas in Wisconsin. Petitioner requested that the Wisconsin PSC redefine the service area requirement where Petitioner could not serve the entire study area of the incumbent rural telephone company, consistent with 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b). Certain incumbent rural telephone companies<sup>1</sup> intervened and opposed the application.

The Wisconsin PSC granted Petitioner's request for ETC designation and for redefinition of the service area requirement, concluding that Petitioner should be designated as an ETC throughout its licensed areas. The Wisconsin PSC found that the public interest would be served by having Petitioner designated as an additional ETC in all of the rural telephone company service areas. To effectuate the designations in the rural telephone company study areas that Petitioner did not serve in their entirety, the Wisconsin PSC determined that the service area requirement for these companies should be redefined.

The Wisconsin PSC's conclusion to redefine the service area requirement as part of its ETC designation was consistent with federal law, the Commission's regulations and decisions, the Joint Board's recommendations, and prior decisions of the Wisconsin PSC. Redefinition of

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<sup>1</sup> CenturyTel, Inc. and TDS Telecommunications Corp. ("Intervenors").

the service area requirement for these rural telephone company areas is necessary to further the universal service goals of the Telecommunications Act of 1996.

Only the Commission's agreement with the Wisconsin PSC's proposed redefinition of the service area requirement, pursuant to section 54.207(c), is required for Petitioner to begin providing universal service as an ETC to these Wisconsin rural consumers. Therefore, Petitioner respectfully requests that the Commission grant its consent to the Wisconsin PSC's proposed redefinition.

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This Petition seeks the Commission’s concurrence, pursuant to section 54.207(c) of the Rules, with redefinition of the study area requirement<sup>1</sup> approved by the Public Service Commission of Wisconsin (“Wisconsin PSC”) in connection with its grant of eligible telecommunications carrier (“ETC”) status to the Petitioner herein. As demonstrated in this Petition, the Wisconsin PSC’s redefinition of the service area requirement in this ETC designation was consistent with federal law, the Commission’s regulations and decisions, the Joint Board’s recommendations, and prior decisions of the Wisconsin PSC. The public interest will be served by the Commission’s prompt concurrence.

**I. BACKGROUND**

Section 254 of the Act directs the Commission and the States to establish universal service support mechanisms to provide affordable and quality telecommunications services to all Americans. 47 U.S.C. §254(b). Section 214(e) of the Act grants general authority to State

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<sup>1</sup> All ETCs receive support for a specific “service area” and, for incumbent rural local exchange carriers (“LECs”), the service area is the study area. 47 C.F.R. § 54.207(a)-(b). The Rules provide for the redefinition of this service area requirement in cases of competitive ETC designations. 47 C.F.R. § 54.207(c). Such redefinition does not change the incumbent rural LEC’s study area.

commissions to designate carriers as an ETC. 47 U.S.C. § 214(e). Among the requirements are that the carrier (1) is a common carrier; (2) provides the supported services; and (3) meets all service and advertising obligations of an ETC. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.101. For an area served by a rural telephone company, the carrier must also show that its designation as an additional ETC is in the public interest. 47 U.S.C. § 214(e)(2). Only a designated ETC may receive universal service support. 47 U.S.C. § 254(e).

An ETC applicant's service area, for support purposes, is defined by the State commission in the designation process. 47 U.S.C. § 214(e)(5). There are no restrictions on the States' definition of service areas in non-rural telephone company territory, but in areas served by a rural telephone company, the service area is initially defined as the rural telephone company's "study area," unless and until the Commission and the State commission both agree to redefine that requirement. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8872 n.434 (1997) ("*Universal Service Order*"). The Commission has long recognized that requiring a new telecommunications provider, especially a wireless provider, to conform its designated service area to the study area of the incumbent local exchange carrier ("ILEC") may give the ILEC an unfair advantage. *Id.* at 8881-83.

The Commission has promulgated 47 C.F.R. § 54.207 to avoid such anti-competitive results. The Rule permits a State commission to designate ETCs for a service area that differs from the incumbent rural telephone company's study area, and it provides that such designations will take effect subject to agreement by the Commission. In making and agreeing to such designations, the Commission and the State commission each must give full consideration to the Joint Board's recommendations and explain their rationale for adopting the alternative service

area. 47 U.S.C. § 214(e)(5); 47 C.F.R. § 54.207(b); *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier In the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1582 (2004) (“*Virginia Cellular*”). There are three factors recommended by the Joint Board that are to be considered by the State commission and the Commission when determining the appropriateness of redefining the service area requirement for an ETC in a rural telephone company’s study area. As discussed in more detail below, the Wisconsin PSC’s determination to grant the proposed redefinition is consistent with these factors.

## **II. THE APPLICATION TO THE WISCONSIN PSC**

On January 22, 2004, Petitioner filed an Application with the Wisconsin PSC for designation as a federal ETC and for redefinition of the service area requirement where necessary. The Application demonstrated the Petitioner’s satisfaction of the ETC requirements under 47 U.S.C. § 214(e) and the benefit to rural consumers of designating Petitioner as an additional ETC in the areas served by the rural telephone companies.

The Wisconsin PSC issued a Notice of Investigation on February 19, 2004, requesting comments. The intervening incumbent rural carriers filed comments opposing the Application consistent with their past opposition to requests for competitive ETC designations.

The Wisconsin PSC considered the Application at its June 3, 2004, Open Meeting and subsequently issued an *Order*<sup>2</sup> granting Petitioner’s request for ETC designation and for redefinition of the service area requirement. The Wisconsin PSC found that Petitioner was qualified to be designated as an ETC and that the public interest would thereby be served. To

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<sup>2</sup> *Application of American Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8206-TI-100, Final Decision (June 18, 2004) (“*Order*”) (attached hereto as Exhibit A).

effectuate the designation in the rural telephone company study areas that Petitioner did not serve in their entirety, the Wisconsin PSC determined that the service area requirement for these companies should be redefined to a wire center basis in the areas for which Petitioner requested designation. *Order* at 10.

The Wisconsin PSC is well versed in the requirements for redefinition of the service area requirement under 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207. Prior to Petitioner's Application, the Wisconsin PSC had analyzed and granted requests for service areas redefinition for several competitive ETCs.<sup>3</sup> Subsequent to Petitioner's Application, the Wisconsin PSC again

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<sup>3</sup> See *Application of ALLTEL Communications, Inc., et al., for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 7131-TI-101, Final Decision (Sept. 30, 2003) ("ALLTEL Order"); *Application of Brown County MSA Cellular Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8159-TI-100, Final Decision (Sept. 30, 2003) ("Brown County Order"); *Application of Metro Southwest PCS, LLP for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8123-TI-100, Final Decision (Sept. 30, 2003) ("Metro Southwest Order"); *Application of Midwest Wireless Wisconsin, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8203-TI-100, Final Decision (Sept. 30, 2003) ("Midwest Wireless Order"); *Application of NPCR, Inc., d/b/a Nextel Partners for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8081-TI-101, Final Decision (Sept. 30, 2003) ("Nextel Partners Order"); *Application of Nsighttel Wireless, LLC for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8202-TI-101, Final Decision (Sept. 30, 2003) ("Nsighttel Order"); *Application of Wausau Cellular Telephone Company Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8250-TI-100, Final Decision (Sept. 30, 2003); *Application of Wisconsin RSA #3 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8194-TI-101, Final Decision (Sept. 30, 2003) ("Wisconsin RSA #3 Order"); *Application of Wisconsin RSA #4 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8195-TI-101, Final Decision (Sept. 30, 2003) ("Wisconsin RSA #4 Order"); *Application of Wisconsin RSA #10 Limited Partnership for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8201-TI-101, Final Decision (Sept. 30, 2003) ("Wisconsin RSA #10 Order"); *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 8225-TI-102, Order Granting ETC Status (Dec. 20, 2002) ("US Cellular Order") (collectively, the "Redefinition Orders").



reviewed and granted a request for redefinition.<sup>4</sup> Two Petitions are currently pending before this Commission seeking agreement with the Wisconsin PSC's determination to redefine the service area.<sup>5</sup>

As discussed in more detail below, the Wisconsin PSC concluded that Petitioner was qualified under the Act for designation as an ETC in the non-rural exchanges and rural telephone company service areas that it served in their entirety. *Order* at 6-10. For rural telephone company service areas that Petitioner did not serve in their entirety, the Wisconsin PSC granted conditional ETC designation, subject to the Commission's consent to redefinition of the service area requirement. *Id.* at 10-12. Appendix B to the *Order*, reproduced below, sets forth the areas in which Petitioner was designated as an ETC contingent on the Commission's approval with the proposed redefinition:

<b>Company Name</b>	<b>Wire Center Code</b>	<b>Prior Order(s) Granting Redefinition</b>
AMERY TELCOM, INC.	AMRYWIXA CYTNWIXA DRPKWIXA	<i>ALLTEL Order</i>
AMHERST TEL CO	RSHTW IXA	<i>Metro Southwest Order</i>
BALDWIN TELECOM	BLDWWIXA WDVLWIXA	

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<sup>4</sup> *Application of CTC Telecom, Inc. for Designation as an Eligible Telecommunications Carrier in Wisconsin*, PSC Docket No. 1455-TI-101, Final Decision (Mar. 22, 2004) (the "CTC Wisconsin Order").

<sup>5</sup> *Wireline Competition Bureau Seeks Comment on Petitions to Redefine Rural Telephone Company Service Areas in Wisconsin and Minnesota*, CC Docket No. 96-45, Public Notice, DA 04-2063 (rel. July 8, 2004) (regarding the *CTC Wisconsin Order*); *Wireline Competition Bureau Initiates Proceeding to Consider the ALLTEL Communications, Inc. Petition to Redefine Rural Telephone Company Service Areas in the State of Wisconsin*, CC Docket No. 96-45, Public Notice, 19 FCC Rcd 3878 (2004). A third Petition was filed on behalf of Midwest Wireless Wisconsin LLC, but subsequently withdrawn. *Petition for Commission Agreement in Redefining the Service Area of Rural Telephone Companies in the State of Wisconsin Pursuant to 47 C.F.R. Section 54.207(c)*, CC Docket No. 96-45, Order, 19 FCC Rcd 2945 (2004).

CENTRAL STATE TEL CO	ABDLWIXA JNCYWIXA LNDSWIXA PTSVWIXA	<i>Metro Southwest Order</i>
CENTURYTEL – CENTRAL WI	AGSTWIXA ALCTWIXA CLGHWIXA FLCKWIXA FRCHWIXA MRLNWIXA NCHLWIXA OSSEWIXA SYMRWIXA	<i>ALLTEL Order; Brown County Order; Metro Southwest Order; Midwest Wireless Order; Nextel Partners Order; Nsighttel Order; Wisconsin RSA #10 Order</i>
CENTURYTEL – NW WI	BNNTWIXA DNBRWIXA DRLDWIXA FRDRWIXA GRDNWIXA LEWSWIXA LKNBWIXA MNNGWIXA OSCLWIXA PPLRWIXA SLSPWIXA WBLKWIXA WBSTWIXA	<i>ALLTEL Order; Nextel Partners Order</i>
CENTURYTEL – MW – KENDALL	ASLDWI01 BYFDWI11 CRNLWI12 HRLYWI11 LDYSWI11 MRNTWI01 OCFLWI11 OCNTWI11 PSHTWI11 SAXNWI11 SPRRWI11 SPRRWI12 SPRRWI13 STNLWI12 WSBNWI11	<i>ALLTEL Order; Metro Southwest Order; Nsighttel Order; Wisconsin RSA #3 Order; Wisconsin RSA #4 Order</i>
CENTURYTEL – MW WI INC – CENCOM	AMBGWIXA CLMNWIXA CMLDWIXA CRVTWIXA GDMNWIXA	<i>Metro Southwest Order; Nextel Partners Order; Nsighttel Order; Wisconsin RSA #3 Order</i>

	HRMYWIXA LENAWIXA PMBNWIXA TWBRWIXA WASKWIXA	
CENTURYTEL – MW – WI INC NW	BOYDWIXA CDOTWIXA CHTKWIXA SPNRWIXA	<i>ALLTEL Order; Nextel Partners Order<sup>6</sup></i>
CENTURYTEL – MW WI INC – WAYSIDE	SHLKWIXA SARNWIXA TTLKWIXA	<i>ALLTEL Order; Brown County Order</i>
CLEAR LAKE TEL CO – WI	CLLKWIXA	
FRONTIER – MONDOVI	MNDVWIXA	<i>ALLTEL Order; Midwest Wireless Order</i>
FRONTIER – ST. CROIX	STPRWIXA	<i>ALLTEL Order</i>
FRONTIER – WISCONSIN	BWLRWIXA CECLWIXA CIVLWIXA GRHMWIXA KSHNWIXA MARNWIXA NEPTWIXA SHWNWIXA TGTNWIXA	<i>ALLTEL Order; Metro Southwest Order; Nsighttel Order; Wisconsin RSA #4 Order</i>
MOSINEE TEL CO	MOSNWIXA	<i>Metro Southwest Order</i>
NELSON TEL. COOP	ARKNWIXA DRNDWIXA	<i>US Cellular Order</i>
NORTHEAST TEL CO	KRKWWIXA MLCTWIXA PLSKWIXA	<i>ALLTEL Order; Brown County Order; Metro Southwest Order; Wisconsin RSA #4 Order</i>
TELEPHONE USA OF WI	BHWDWIXA BLLKWIXA BRRNWIXA BTRNWIXA	<i>ALLTEL Order; Metro Southwest Order; Midwest Wireless Order; Nsighttel Order; Wisconsin RSA #3 Order; Wisconsin RSA #4 Order</i>

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<sup>6</sup> The *CTC Wisconsin Order* also redefined the CenturyTel of the Midwest – Wisconsin service areas. The Order, however, was issued subsequent to Petitioner’s Application, and thus it was not included in Petitioner’s exhibit ultimately adopted by the Wisconsin PSC as Appendix B.

	BYVLWIXA	
	CENTWIXA	
	CLFXWIXA	
	EKMDWIXA	
	EMWDWIXA	
	GLCYWIXA	
	GLDNWIXA	
	GLLTWIXA	
	HYWRWIXA	
	KNAPWIXA	
	LAONWIXD	
	LKWDWIXA	
	MDRKWIXA	
	MLLNWIXA	
	PEPNWIXA	
	PKFLWIXA	
	PLCYWIXA	
	PRSCWIXA	
	RCLKWIXB	
	SCFLWIXA	
	SPBKWIXA	
	SRLKWIXA	
	SRNGWIXA	
	STLKWIXA	
	WABNWIXB	
	WHLRWIXA	
	WNTRWIXA	
TRI - COUNTY TEL. COOP	ELEVWIXA	
	STRMWIXA	
W. WISCONSIN TELCOM	DSVLWIXA	<i>ALLTEL Order; Midwest Wireless Order</i>
	EKLKWIXB	
	EKLKWIXC	
	EUGLWIXA	
	RCFLWIXA	
	SPLKWIXA	

As noted on Appendix B reproduced above, many of the 20 rural telephone company service areas in which Petitioner sought and received conditional ETC designation had already been subject to redefinition by the Wisconsin PSC in its *Redefinition Orders*. Indeed, only three

of the incumbent rural telephone companies had not yet had their service areas redefined at the time of Petitioner's Application.<sup>7</sup>

The Wisconsin PSC's decision to redefine the service area to effectuate Petitioner's ETC designation was made only after careful review of the public interest. The determination to redefine the service area as necessary below the wire center level was thus entirely appropriate.<sup>8</sup> This Commission only a few months ago reiterated that a State commission's "first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved." *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 6422, 6423 (2004) ("*Highland Cellular*"). While the Commission declined to designate Highland Cellular as an ETC for less than an entire exchange, that was done only on public interest grounds as developed in that case with respect to that carrier. In Petitioner's case, the Wisconsin PSC relied on its unique expertise in finding that sub-wire center designation in the Wisconsin telecommunications market is in rural consumers' interests and causes no harm to Wisconsin LECs. There is nothing in the record to suggest that the Wisconsin PSC erred in its evaluation of the appropriate service areas for the Wisconsin telecommunications market. Therefore, the Commission should accept the Wisconsin PSC's conclusions.<sup>9</sup>

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<sup>7</sup> Baldwin Telecom, Inc., Clear Lake Telephone Company, and Tri County Telephone Cooperative.

<sup>8</sup> Of the 121 wire centers on Appendix B, only 30 are not wholly within Petitioner's CMRS licensed service area. These areas are identified on Exhibit B hereto.

<sup>9</sup> In the event that the Commission declines to concur in redefinition below the wire center level, Petitioner respectfully requests that it nevertheless proceed to agree with the Wisconsin PSC's decision to redefine the service areas on a wire center basis.

### **III. DISCUSSION**

#### **A. The Wisconsin PSC's Redefinition of the Service Area Requirement for Certain Rural Telephone Company Areas is Consistent with Federal Universal Service Policy.**

In passing the 1996 amendments to the Act, Congress declared its intent:

To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.

Pub. L. No. 104-104, 110 Stat. 56, 56 (1996) (emphasis added). Consistent with its pro-competitive goals, the Act specifically contemplates the designation of multiple ETCs, including in rural telephone companies' territories, consistent with the public interest. 47 U.S.C. § 214(e)(2). The Commission has long recognized that requiring a new telecommunications provider, especially a wireless provider, to conform its designated service area to the study area of the ILEC may give the ILEC an unfair advantage. *Universal Service Order*, 12 FCC Rcd at 8881-83. That is particularly demonstrated in this instance because portions of the Wisconsin rural LEC study areas lie outside the Petitioner's licensed RSAs. Redefinition is in the public interest because it will enable Petitioner to bring new services and new technologies to customers of Wisconsin's rural telephone companies, who now have no meaningful choice of universal service providers.

The Commission has previously determined that redefinition of the service area requirement facilitates local competition by enabling new providers to serve based on licensed areas. *Petition for Agreement With Designation of Rural Company Eligible Telecommunications Carrier Service Areas and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, Memorandum Opinion and Order, 15 FCC Rcd 9921, 9927-28 (Com. Car. Bur. 1999). The FCC noted: "We find that our concurrence with rural LEC petitioners' request for designation of their individual exchanges as

service areas is warranted in order to promote competition.” *Id.* at 9927. The FCC concluded that the Washington Commission’s ‘effort to facilitate local competition justifies [the FCC’s] concurrence with the proposed service area designation.” *Id.* at 9928. This likewise illustrates the Commission’s deference to the unique qualifications of State commissions to best determine whether requests for redefinition should be granted. *See Highland Cellular*, 19 FCC Rcd at 6423.

The Commission also has stated a policy favoring redefinition in instances where a rural carrier’s study area is large and/or non-contiguous. In response to issues raised by competitive ETCs and wireless carriers who might not be able to provide facilities-based service throughout a rural company’s entire study area, the Commission has expressly urged State commissions to explore redefinition for purposes of ETC designations. *Universal Service Order*, 12 FCC Rcd at 8881-82. The Commission has also cautioned that requiring a new entrant to serve a non-contiguous service area as a prerequisite to ETC eligibility would impose a “serious barrier to entry, particularly for wireless carriers” and would be “particularly harmful to competition in rural areas, where wireless carriers could potentially offer service at much lower costs than traditional wireline service.” *Universal Service Order*, 12 FCC Rcd at 8882-83.

The proposed redefinition will foster competition in rural areas of Wisconsin. Redefining the service area requirement for purposes of defining the ETC service areas will enable Petitioner to offer competitive universal services to the customers of these rural telephone companies, whose study areas are large and/or non-contiguous. This effort at facilitating competition furthers the goals of the Act and this Commission. *See Virginia Cellular*, 19 FCC Rcd at 1576. Importantly, the Wisconsin PSC has employed its unique position and expertise in analyzing the telecommunications market in Wisconsin and determined that redefinition of the service area for

purposes of Petitioner's ETC designation will benefit Wisconsin consumers while at the same time not harming Wisconsin rural LECs. Therefore, the Commission should agree to the redefinition of the service areas consistent with the Wisconsin PSC's determinations in this proceeding.

**B. The Requested Redefinition Satisfies the Joint Board's Factors Under Section 214(e)(5) of the Act.**

As noted above, the Commission has identified three factors initially recommended by the Joint Board which should be considered when determining the appropriateness of redefining a rural telephone company's service area. *See, e.g., Highland Cellular*, 19 FCC Rcd at 6439-40 (applying Joint Board's recommended factors). The Wisconsin PSC's determination to redefine the service area is consistent with these factors.

**1. Agreeing to this redefinition will not result in the effects of creamskimming.**

The first factor is the risk the applicant is selectively seeking designation in the low cost, high support areas in the rural ILEC's study area, a process known as "creamskimming." The Commission has noted that, if a competitor were required to serve a rural telephone company's entire study area, the risk of "creamskimming" would be eliminated because a competitive ETC would be prevented from selectively targeting service only to the lowest cost exchanges of the rural ILEC's study area. *Universal Service Order*, 12 FCC Rcd at 8881-82. As the Joint Board explained:

We note that some commenters argue that Congress presumptively retained study areas as the service area for rural telephone companies in order to minimize "cream skinning" by potential competitors. Potential "cream skinning" is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area.



*Federal-State Joint Board on Universal Service*, Recommended Decision, 12 FCC Rcd 87, 179-80 (1996) (“*Joint Board Recommendations*”).

The Wisconsin PCS’s conclusion to redefine the service area expressly took into account any creamskimming concerns. The Wisconsin PSC reviewed the record before it and concluded “nothing indicates that [Petitioner] is requesting ETC status only in certain wire centers or portions of wire centers in an effort to obtain high-level subsidies for low-cost areas.” *Order* at 12. Thus, the Wisconsin PSC found no evidence of intentional creamskimming. Moreover, the Wisconsin PSC went further and also concluded that no effects of creamskimming would result from redefinition. “Annual report data filed with the Commission show that the requested exchanges and wire centers do not show any pattern of being lower cost than other wire centers and exchanges served by the rural providers.” *Id.* Thus, there is neither the intention to creamskim nor the effects of creamskimming. As the Wisconsin PSC concluded, Petitioner’s requested Designated Areas instead simply constitute “the areas in which it was licensed to operate.” *Id.*

**2. Agreeing to this redefinition will not affect the unique status of rural telephone companies.**

The second factor to consider is the regulatory status enjoyed by rural telephone companies under the Act. The Commission has determined that initially establishing the rural telephone company’s study area as the service area was appropriate, at least temporarily, in recognition of the different treatment afforded to smaller rural telephone companies which are exempt from Section 251(c) requirements pursuant to Section 251(f)(1)(A). *Universal Service Order*, 12 FCC Rcd at 8881-82. In making its recommendation, the Joint Board had reasoned:

For example, rural telephone companies are initially exempt from the interconnection, unbundling, and resale requirements of 47 U.S.C. § 251(c). The 1996 Act continues this exemption until the relevant state commission finds, *inter alia*, that a request of a rural telephone company for interconnection, unbundling,

or resale would not be unduly economically burdensome, would be technically feasible, and would be consistent with section 254. Moreover, while a state commission must designate other eligible carriers for non-rural areas, states may designate additional eligible carriers for areas served by a rural telephone company only upon a specific finding that such a designation is in the public interest.

*Joint Board Recommendations*, 12 FCC Rcd at 180.

The Wisconsin PSC's determination is consistent with the Commission's findings. As the Commission recently concluded in *Virginia Cellular*:

[1] [t]he high-cost universal service mechanisms support all lines served by ETCs in rural areas. [2] . . . [R]eceipt of high-cost support by [the applicant] will not affect the total amount of high-cost support that the incumbent rural telephone company receives. [3] . . . [T]o the extent that [the applicant] or any future competitive ETC captures incumbent rural telephone company lines . . . to existing wireline subscribers, it will have no impact on the amount of universal service support available to the incumbent rural telephone companies for those lines they continue to serve. [4] . . . [R]edefining the service areas of the affected rural telephone companies will not change the amount of universal service support that is available to these incumbents.

*Virginia Cellular*, 19 FCC Rcd at 1583.

Nothing in the service area redefinition process for an ETC applicant affects the rural carrier's statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c). Redefining the rural telephone company service area requirement on this basis will not compromise or impair the unique treatment of these companies as rural telephone companies under Section 251(f) of the Act. The companies will still retain the statutory exemptions from interconnection, unbundling and resale requirements under 47 U.S.C. § 251(c) even if their service areas are redefined for purposes of ETC designations.

Additionally, the redefinition process does not affect the way in which a rural ETC calculates its embedded costs or the amount of per-line support it receives. "Under the Commission's rules, receipt of high-cost support by [a competitive ETC] will not affect the total amount of high-cost support that the incumbent rural telephone company receives." *Virginia*

*Cellular*, 19 FCC Rcd at 1583; *see also Highland Cellular*, 19 FCC Rcd at 6440. Rather, the redefinition process only modifies the service area requirement for an incumbent's service area for purposes of designating a competitive ETC. Moreover, redefinition will not affect the total amount of high-cost support that an incumbent rural telephone company will receive. *Id.* Thus, the incumbent carriers will retain their unique regulatory status as rural telephone companies under the Act consistent with the Joint Board's recommendations. The Wisconsin PSC's determination is also consistent with the Commission's conclusion in *Highland Cellular* that the unique regulatory status of a rural telephone company is unaffected by the redefinition of its service area. *Highland Cellular*, 19 FCC Rcd at 6440.

The Act's public interest factor for the designation of an additional ETC in the service areas of these rural telephone companies under 47 U.S.C. § 214(e)(2) also remains in place as a safeguard. The continued existence of the public interest standard has been noted by the Commission as a safeguard available to a State commission to support a redefinition request for service areas on a less-than-study area level. *Universal Service Order*, 12 FCC Rcd at 8882-83. This public interest factor remains as an effective check to prevent the designation of an additional competitive ETC who may seek to target only low cost areas or otherwise pose a detriment to the rural consumers of the incumbents. Thus, the Wisconsin incumbent LECs retain their unique status and special treatment as rural telephone companies under the Act consistent with the Joint Board's recommendations if the service area standard for their study areas is redefined.

**3. Agreeing to this redefinition will not create any administrative burdens.**

The third and final factor to consider is whether any administrative burdens might result from the redefinition of the service area. A rural telephone company's universal service support

payments are currently based on a rural company's embedded costs determined at the study area level. *Universal Service Order*, 12 FCC Rcd at 8881-82. The Joint Board initially expressed concern that rural telephone companies might have difficulty calculating costs on a less-than-study area level. The Joint Board stated:

Another reason to retain existing study areas is that it is consistent with our recommendation that the determination of the costs of providing universal service by a rural telephone company should be based, at least initially, on that company's embedded costs. Rural telephone companies currently determine such costs at the study-area level. We conclude, therefore, that it is reasonable to adopt the current study areas as the service areas for rural telephone companies rather than impose the administrative burden of requiring rural telephone companies to determine embedded costs on a basis other than study areas.

*Joint Board Recommendations*, 12 FCC Rcd at 180. In 2001, however, the Commission adopted the Rural Task Force's recommendation for disaggregation and targeting of support, which distributes support among lines based more closely on the cost of providing service.<sup>10</sup> The Commission found that disaggregation and targeting "achieves a reasonable balance between rural carriers' needs for flexibility and the Commission's goal of encouraging competitive entry."<sup>11</sup> The Commission found that "the provision of uniform support throughout the study area of a rural carrier may create uneconomic incentives for competitive entry and could result in support not being used for the purpose for which it was intended."<sup>12</sup> To avoid a "one-size-fits-all" approach, the Commission allows rural telephone companies to select among three "paths"

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<sup>10</sup> *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order, Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45 and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11302 (2001) ("MAG Order").

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

to disaggregation and targeting of their support.<sup>13</sup> As a result, rural telephone companies are now able to minimize competitors' ability to cream-skim by disaggregating and targeting their support to their highest-cost lines.

The Wisconsin PSC's determination to redefine the service area is also consistent with this last factor. In this case, the Wisconsin PSC expressly identified disaggregation consistent with the *MAG Order* as a basis for redefining the service area requirement. *Order* at 11-12. Redefining the rural telephone company service areas will also not require the rural telephone companies to determine their costs on a basis other than the study area level. Nor, as the Wisconsin PSC found, does redefinition modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which they will comply with these rules. *Order* at 11.

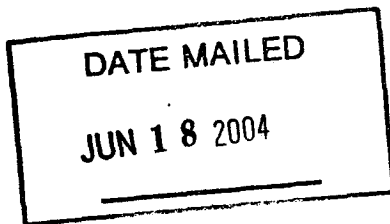
#### **IV. CONCLUSION**

The Wisconsin PSC properly concluded that Petitioner should be designated as an ETC throughout the rural and non-rural telephone company areas it serves. The Wisconsin PSC specifically found it to be in the public interest to designate Petitioner as an additional ETC in each of these areas. To effectuate the designations in the rural telephone company study areas that Petitioner did not serve in their entirety, the Wisconsin PSC concluded that the service area requirement for these companies should be redefined.

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<sup>13</sup> *Id.* at 11302-03. *See also* 47 C.F.R. § 54.315.





JUN 21 2004

BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN

Application of American Cellular Corporation for Designation  
as an Eligible Telecommunications Carrier in Wisconsin

8206-TI-100

**FINAL DECISION**

This is the final decision in this proceeding to determine whether to designate American Cellular Corporation (ACC), as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive universal service fund (USF) monies.

**Introduction**

ACC filed an application for ETC designation on January 22, 2004. The Commission issued a Notice of Investigation on February 19, 2004. That Notice requested comments, to be filed on or before March 24, 2004. ACC, CenturyTel, Inc., and TDS Telecommunications Corp. filed comments. The Commission discussed this matter at its June 3, 2004, open meeting. A list of parties interested in this proceeding may be found in Appendix A.

ACC requested ETC designation for the exchanges, and parts of exchanges, shown in its application. That application and the maps which show the requested areas, can be viewed on the Commission website.<sup>1</sup> A list of requested wire centers is shown in Appendix B (which is Attachment 1 and 2 to the application). The territories for which ETC designation is requested are served by a mix of rural and non-rural telecommunications carriers.

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<sup>1</sup> See the Public Service Commission website at: <http://psc.wi.gov> and use the Electronic Regulatory Filing System link to find information on docket 8206-TI-100.

**Findings of Fact**

1. The wireless industry, its customary practices, its usual customer base, and ACC's desire not to obtain state USF money create an unusual situation.
2. It is reasonable to adopt different ETC eligibility requirements and obligations for ACC than specified by Wis. Admin. Code § PSC 160.13.
3. It is reasonable to require ACC to meet only the federal requirements for ETC status in order to be eligible for ETC designation.
4. It is reasonable to relieve ACC from ETC obligations other than those imposed under federal law.
5. It is reasonable to require that ACC not apply for state USF funds and that if it ever does, all state requirements for and obligations of ETC status shall again be applicable to it.
6. ACC meets the federal requirements for ETC designation.
7. It is in the public interest to designate ACC as an ETC in certain areas served by rural telephone companies.
8. It is reasonable to grant ETC status to ACC in the nonrural wire centers indicated in its application, to the extent such areas are located within the state.
9. It is reasonable to grant ETC status to ACC in the areas indicated in its application where the request includes the entire territory of a rural telephone company, to the extent such areas are located within the state.
10. It is reasonable to grant ETC status to ACC in the areas indicated in its application where the request does not include the entire territory of a rural telephone company, to the extent



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the areas are located within the state, conditioned upon the Federal Communications Commission (FCC) approving the use of the smaller areas.

### **Conclusions of Law**

1. The Commission has jurisdiction and authority under Wis. Stat. §§ 196.02, and 196.218; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of the Telecommunications Act of 1996, to make the above Findings of Fact and to issue this Order.

2. The law does not require the Commission to conduct a hearing in this docket, as requested by CenturyTel and TDS Telecommunications Corp.

3. Neither federal law nor state law create a substantial, or property, interest in exclusive ETC status for incumbent rural ETCs.

4. Even if “notice and opportunity for hearing” as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated February 19, 2004, satisfies this requirement.

### **Opinion**

On December 20, 2002, the Commission granted the U.S. Cellular ETC status as applied for in docket 8225-TI-102. *Application of United States Cellular Corporation for Designation as an Eligible Telecommunications Carrier in Wisconsin*, docket 8225-TI-102, 2002 WL 32081608, (Wisconsin Public Service Commission, December 20, 2002). The instant application is substantively similar to the application of U.S. Cellular. The Commission

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reaffirms its decision in docket 8225-TI-102 and relies on the opinion issued in the Final Decision in that docket, to approve ACC's application.

ETC status was created by the FCC, and codified in 47 U.S.C. § 214(e)(2). Under FCC rules, the state commissions are required to designate providers as ETCs. 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b). Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from some, but not all, state universal service programs.

The FCC established a set of minimum criteria that all ETCs must meet. These are codified in the federal rules. 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101(a). The 1996 Telecommunications Act states that: "States may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." 47 U.S.C. § 254(f). A court upheld the states' right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5<sup>th</sup> Cir. 1999). While states must designate multiple ETCs if more than one provider meets the requirements and requests that status in a nonrural area, it must determine that it is in the public interest before designating more than one ETC in a rural area. 47 C.F.R. § 54.201. The Commission has already designated one ETC in each rural area.

In the year 2000, the Commission promulgated rules covering ETC designations and requirements in Wisconsin. Wis. Admin. Code § PSC 160.13. Those rules govern the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission. The application filed by ACC asks that it be designated as an ETC for federal purposes only. It states that it is not seeking designation as an ETC for state purposes and, therefore, is not required to meet the additional state requirements.

States must examine the federal requirements, but are allowed to create additional requirements. Wisconsin has done so. The Commission's requirements for ETC designation clarify and expand upon the more basic FCC rules. There is no provision in the rule for designation as an ETC for federal purposes only. If a provider seeks to be designated as an ETC, it must follow the procedures and requirements in Wis. Admin. Code § PSC 160.13 and, if such a designation is granted, that designation serves to qualify the provider for both state and federal universal service funding. However, Wis. Admin. Code § PSC 160.01(2)(b) provides that:

Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter.

ACC's request for ETC status presents an unusual situation. The wireless industry, its customary practices, and its usual customer base are quite different than those of wireline companies. Additionally, ACC has stated that it has no desire to obtain state USF money. The Commission finds that under the particular circumstances of this case, it is reasonable to adopt different ETC requirements for ACC to meet, and to grant ETC status to ACC with certain limitations.

Because ACC only wishes to obtain federal USF support, the Commission shall adopt the federal requirements for ETC status as the requirements that ACC must meet to obtain ETC status. The federal requirements are found in 47 U.S.C. § 214(e)(1) and 47 C.F.R. §§ 54.101(a), 54.405 and 54.411. Further, the Commission relieves ACC from ETC obligations other than those imposed under federal law. However, since ACC will not be subject to the state requirements and state obligations, the Commission requires that ACC not apply for state USF

money. If ACC ever does apply for state USF money, then all of the state requirements for and obligations of ETC status shall again be applicable to ACC.

The Commission finds that ACC has met the requirements for ETC designation; it will offer supported service to all customers in its designation areas and will advertise these services. In the FCC Declaratory Ruling *In the Matter of Federal-State Joint Board on Universal Service, Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, FCC 00-248 (released 8/10/00), par. 24 (South Dakota Decision) the FCC has stated:

A new entrant can make a reasonable demonstration to the state commission of its capability and commitment to provide universal service without the actual provision of the proposed service. There are several possible methods for doing so, including, but not limited to: (1) a description of the proposed service technology, as supported by appropriate submissions; (2) a demonstration of the extent to which the carrier may otherwise be providing telecommunications services within the state; (3) a description of the extent to which the carrier has entered into interconnection and resale agreements; or, (4) a sworn affidavit signed by a representative of the carrier to ensure compliance with the obligation to offer and advertise the supported services.

If this is sufficient for a new entrant, it would seem to be even more so for someone who has already started to serve portions of the exchanges. ACC submitted certification ensuring compliance and, as mentioned earlier, is already providing service in the state.

The Commission finds that ACC meets the requirement to offer service to all requesting customers. It has stated in its application and comments that it will do so. In the comments it is argued that the applicant will not provide service to all customers in the indicated exchanges and thus, because of the issue of "cellular shadows," the applicant will not meet the same standard that is applied to wireline providers. However, this is a case where the details are important.

It is true that the purpose of universal service programs is to ensure that customers who might not otherwise be served at affordable rates by a competitive market still receive service.

However, like for wireline companies, access to high-cost assistance is what helps ensure that service is provided. For ACC, access to high-cost assistance is exactly what will make expanding service to customers requesting service in the areas for which it is designated as an ETC “commercially reasonable” or “economically feasible.” As the FCC has said:

A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request. South Dakota Decision, par. 17.

ACC, like wireline ETCs, must fulfill this mandate, and access to high-cost funding is what will help make doing so possible. The issue of “dead spots” is not significantly different from a wireline ETC that does not have its own lines in a portion of an exchange, perhaps a newly developed area. After obtaining a reasonable request for service, the wireline is required to find a way to offer service, either through extending its own facilities or other options. So too, ACC must be given a reasonable opportunity to provide service to requesting customers, whether through expansion of its own facilities or some other method.

ACC has also stated in its certification, application, and comments that it will advertise the designated services as required under 47 U.S.C. § 214(e)(1)(B), including the availability of low-income programs.

Other objections to ACC’s designation focus on an alleged inability to meet certain additional state requirements in Wis. Admin. Code § PSC 160.13. These are moot, however, since the Commission has adopted different requirements for ACC.

Some of the exchanges for which ACC seeks ETC status are served by nonrural ILECs (Wisconsin Bell, Inc., d/b/a SBC Wisconsin {SBC} or Verizon North Inc. {Verizon}); a list is shown in Appendix B. Under Wis. Admin. Code § PSC 160.13(3) and 47 U.S.C. § 251(e)(2), the Commission must designate multiple ETCs in areas served by such nonrural companies. However, the Commission may only designate multiple ETCs in an area served by a rural company if designating more than one ETC is in the public interest. Some of the exchanges for which ACC seeks ETC status are served by rural telephone companies.

The Commission finds that designating ACC as an additional ETC in these areas is in the public interest. In its determination, the Commission is guided by the Wis. Stat. § 196.03(6) factors to consider when making a public interest determination:

- (a) Promotion and preservation of competition consistent with ch. 133 and s. 196.219;
- (b) Promotion of consumer choice;
- (c) Impact on the quality of life for the public, including privacy Considerations;
- (d) Promotion of universal service;
- (e) Promotion of economic development, including telecommunications infrastructure deployment;
- (f) Promotion of efficiency and productivity;
- (g) Promotion of telecommunications services in geographical areas with diverse income or racial populations.

The Commission finds that designating ACC as an ETC in areas served by rural companies will increase competition in those areas and, so, will increase consumer choice. While it is true that ACC is currently serving in at least some of these areas, the availability of high-cost support for infrastructure deployment will allow ACC to expand its availability in these areas. Further, designation of another ETC may spur incumbent local exchange carrier (ILEC) infrastructure deployment and encourage further efficiencies and productivity gains.

Additional infrastructure deployment, additional consumer choices, the effects of competition, the provision of new technologies, a mobility option and increased local calling areas will benefit consumers and improve the quality of life for affected citizens of Wisconsin. As a result, the Commission finds that it is in the public interest to designate ACC as an ETC in the areas served by rural telephone companies for which it has requested such designation.<sup>2</sup>

The areas for which ACC is granted ETC status vary. Wis. Admin. Code § PSC 160.13(2) states that the areas in which a provider shall be designated as an ETC depend on the nature of the ILEC serving that area. If the ILEC is a nonrural telephone company, the designation area is the ILEC's wire center. The FCC has urged states not to require that competitive ETCs be required to offer service in the entire territory of large ILECs. It has found that such a requirement could be a barrier to entry. *Report and Order in the Matter of Federal-State Joint Board on Universal Service*, FCC 97-157 (released 5/8/97) pars. 176-177 (First Report and Order). Wisconsin's rule provision resolves this federal concern. As a result, ACC is granted ETC status in the SBC and Verizon wire centers for which it requested such status.

Wis. Admin. Code § PSC 160.13(2) provides that if the ILEC is a rural telephone company, the ETC designation area is different. For an area served by a rural telephone company, the designation area is generally the entire territory (study area) of that rural company. A smaller designation area is prohibited unless the Commission designates and the FCC approves a smaller area. 47 C.F.R. § 54.207(b). ACC's application contained a list of rural telephone company areas for which it requested ETC status. This list is shown in Appendix B.

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<sup>2</sup> Many other state commissions and the FCC have approved wireless ETC applications as second ETCs in rural areas on similar grounds.

ACC has asked for ETC designation in entire service territories of some rural companies and in only some wire centers in other service territories. It has also requested designation in just those parts of particular wire centers covered by its wireless license.

The Commission also grants ETC status to ACC in the areas for which it is seeking designation for the entire territory of a rural telephone company, to the extent that such exchanges are located within the state. Finally, where ACC is asking for ETC designation in some, but not all, parts of the territory of a rural telephone company, the Commission conditionally grants ETC status in the areas for which ACC has requested such designation, to the extent that such exchanges are located within the state. However, ACC must apply to the FCC for approval of the use of a smaller area in such a designation. 47 C.F.R. § 54.207(c)(1). If the FCC approves use of the smaller area, then ACC's ETC status for the smaller area becomes effective. If the FCC does not approve use of the smaller area, then ACC's conditional ETC status for such an area is void. In such a case, if ACC determines that it then wants to apply for ETC status in the entire territory of the rural company, it may submit a new application requesting such designation.

The Commission grants this conditional status after having considered the changing market and the reason why the limitations on ETC designation in rural areas was created. Originally there were concerns about "cherry picking" or "cream skimming." At that time the USF support was averaged across all lines served by a provider within its study area. The per line support was the same throughout the study area. The concern was that competitive companies might ask for ETC designation in the parts of a rural company's territory that cost less to serve. It could thereby receive the averaged federal high-cost assistance while only serving



the low-cost areas of the territory, while the ILEC received federal high-cost assistance but had to serve the entire territory, including the high cost areas. *Report and Order in the Matter of Federal-State Joint Board on Universal Service*, FCC 97-157 (released 5/8/97) par. 189 (First Report and Order). As a result, the FCC found that, unless otherwise approved by both the state and the FCC, a competitor seeking ETC status in the territory of a rural company must commit to serving the entire territory. (First Report and Order, par. 189.)

However, since that time the USF funding mechanisms have changed. Currently, a competitive ETC gets the same amount of federal high-cost assistance per line as the ILEC. An ILEC has the option to target the federal high-cost assistance it receives so that it receives more USF money per line in the parts of the territory where it costs more to provide service, and less federal USF money in the parts of the territory where it costs less to provide service. *In the Matter of Multi-Association Group (MAG) Plan*, FCC 01-157 (released 5/23/01), par. 147. (MAG Order.) Since the competitive ETC receives the same per line amount as the ILEC, if it chooses to only serve the lower cost parts of the territory then it receives only the lower amount of federal USF money. As a result, as recognized by the FCC, the concerns about “cherry - picking” and “cream skimming” are largely moot. *In the Matter of Reconsideration of Western Wireless Corporation’s Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, FCC 01-311 (released 10/16/01), par. 12.

In the MAG Order, rural telephone companies were given the opportunity to choose a disaggregation and targeting method or to not disaggregate and target USF support. (MAG Order, pars. 147-154.) Companies were allowed to choose one of three targeting paths. However, even if a company has not taken advantage of the opportunity to target its USF

assistance, if a competitive ETC is named in all or part of the service territory of a rural company, that company may ask the Commission to allow it to choose another Path. The FCC believed that state involvement in path changes gave competitors some certainty as to the amount of per line support available while preventing a rural company from choosing or moving to a different path for anti-competitive reasons. (MAG Order, par. 153.)

Further, nothing indicates that ACC is requesting ETC status only in certain wire centers or portions of wire centers in an effort to obtain high-level subsidies for low-cost areas. Annual report data filed with the Commission show that the requested exchanges and wire centers do not show any pattern of being lower cost than other wire centers and exchanges served by the rural providers. Instead, the evidence appears to indicate that ACC chose the areas for which it is requesting ETC status on the basis of the areas in which it was licensed to operate.

### **Requests for Hearing**

In accordance with the Notice Requesting Comments, dated February 19, 2004, the Commission received a joint filing from two companies, which requested, on various grounds, the Commission conduct a contested case hearing before deliberation of the application. CenturyTel, Inc., and TDS Telecommunications Corp. claimed a right to a hearing under Wis. Admin. Code § PSC 160.13(3) and Wis. Stat. § 227.42. The law, however, does not require the Commission conduct a hearing in this docket as requested. Furthermore, even if “notice and opportunity for hearing” as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated February 19, 2004, satisfies this requirement.

CenturyTel, Inc., and TDS Telecommunications Corp. claimed a right to a hearing under Wis. Admin. Code § PSC 160.13(3) and Wis. Stat. § 227.42.

Wis. Admin. Code § PSC 160.13 (3) states:

For an area served by an incumbent local exchange service provider that is a rural telephone company, the commission may only designate an additional eligible telecommunications carrier after finding that the public interest requires multiple eligible telecommunications carriers, pursuant to federal law and s. 196.50 (2), Stats. For an area served by an incumbent local exchange service provider that is not a rural telephone company, the commission may designate an additional eligible telecommunications carrier without making such a finding.

Wis. Stat. § 196.50(2), designates the process to certify a telecommunications utility.

Wis. Stat. § 196.50(2), states in part, “. . . after notice and opportunity for hearing, that the applicant possesses sufficient technical, financial and managerial resources to provide telecommunications service to any person within the identified geographic area.” According to the rule and statute it would appear that notice and opportunity for hearing is a required procedure in the instant case.

Wis. Stat. § 196.50(2), however, does not apply to an application for ETC status of a wireless company to be an additional ETC in a rural area. Wis. Stat. § 196.202,<sup>3</sup> expressly

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<sup>3</sup> Wis. Stat. § 196.202, states:

**Exemption of commercial mobile radio service providers. (2) Scope of regulation.** A commercial mobile radio service provider is not subject to ch. 201 or this chapter, except as provided in sub. (5), and except that a commercial mobile radio service provider is subject to s. 196.218 (3) if the commission promulgates rules that designate commercial mobile radio service providers as eligible to receive universal service funding under both the federal and state universal service fund programs. If the commission promulgates such rules, a commercial mobile radio service provider shall respond, subject to the protection of the commercial mobile radio service provider's competitive information, to all reasonable requests for information about its operations in this state from the commission necessary to administer the universal service fund.

**(5) Billing.** A commercial mobile radio service provider may not charge a customer for an incomplete call.

restricts Commission jurisdiction over wireless providers. This statute prevents the Commission from applying almost every provision of Wis. Stat. ch. 196, to wireless providers, except for Wis. Stat. § 196.218(3).<sup>4</sup> This section only applies if, “the commission promulgates rules that designate [cellular] providers as eligible to receive universal service funding under both the federal and state universal service fund programs.” Wis. Stat. § 196.218(3), mandates telecommunications providers contribute to the Wisconsin Universal Service Fund (WUSF). (Wireless providers currently have been exempted.) This section, however, is wholly unrelated to the requirements for eligibility to receive money from the WUSF and, otherwise, unrelated to this case.<sup>5</sup>

The Commission cannot apply Wis. Stat. § 196.50(2), to wireless providers. The Commission, therefore, cannot proceed under Wis. Stat. § 196.50(2)(f), when evaluating the ETC application of a wireless provider. As a matter of law, the reference to Wis. Stat. § 196.50(2)(b)(f), in Wis. Admin. Code § PSC 160.13, cannot apply to ETC applications of wireless providers, including ACC.

Wis. Stat. § 227.42 provides a right to a hearing, treated as a contested case, to any person filing a written request for a hearing with an agency who meets the following 4-part test:

- (a) A substantial interest of the person is injured in fact or threatened with injury by agency action or inaction;
- (b) There is no evidence of legislative intent that the interest is not to be protected;

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<sup>4</sup> Wis. Stat. § 196.218 (3), states, in part:

**Contributions to the fund.** (a) 1. Except as provided in par. (b), the commission shall require all telecommunications providers to contribute to the universal service fund beginning on January 1, 1996. determined by the commission under par. (a) 4.

<sup>5</sup> Like the Legislature, Congress has also limited the state role in regulating on wireless carriers. 47 U.S.C. § 332(c)(3); *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983 (7th Cir. 2000).

(c) The injury to the person requesting a hearing is different in kind or degree from injury to the public caused by the agency action or inaction; and

(d) There is a dispute of material fact.

CenturyTel, Inc., and TDS Telecommunications Corp. own local exchange telephone companies that provide essential telecommunications service as ETCs in the rural areas at issue. These companies are competitors of ACC. On this basis, these companies claim they have a substantial interest protected by law, and will suffer special injury based on the ETC designation of ACC. Federal law and state law, however, do not create a substantial, or property, interest in exclusive ETC status for incumbent rural ETCs. *Alenco Communications v. FCC*, 201 F.3d 608 (2000) (“The purpose of universal service is to benefit the customer, not the carrier.”); *WITA v. WUTA*, 65 P.3d 319 (2003); *In re Application of GCC License Corp.*, 647 N.W.2d 45, 52, 264 Neb. 167, 177 (2002). (“[r]ather, customers’ interest, not competitors’, should control agencies’ decisions affecting universal service” and that “[t]he Telecommunications Act does not mention protecting the private interests of incumbent rural carriers, who are often exclusive ETCs simply by default as the sole service provider operating in a particular area.”) *See also*, *State ex rel. 1<sup>st</sup> Nat. Bank v. M&I Peoples Bank*, 95 Wis. 2d 303, 311 (1980). (Economic injury as the result of lawful competition does not confer standing.); *MCI Telecommunications v. Pub. Serv. Comm.*, 164 Wis. 2d 489, 496, 476 N.W.2d 575 (Ct. App. 1991); and *Wisconsin Power & Light v. PSC*, 45 Wis. 2d 253 (1969) (“... the predominant purpose underlying the public utilities law is the protection of the consuming public rather than the competing utilities.”)

In addition, these companies also claim that granting ACC ETC status will reduce the amount of USF funds available to the public. However, the companies' claim is entirely speculative. Further, as explained above, such result does not injure companies' protected interest. Finally, increasing the number of carriers eligible for federal USF money will increase the amount of federal USF dollars brought into Wisconsin. The federal USF provides a benefit to customers through the assistance of carriers who commit to providing service in high-cost areas. The designation of more than one ETC in a particular high-cost area allows more carriers providing service in rural Wisconsin, such as ACC, to tap into money collected on a nation-wide basis so that more services and more provider choices can be afforded to these customers. As such, ETC designation, like the instant one, necessarily provides a benefit to customers.

The law does not require the Commission conduct a hearing in this docket. Even if "notice and opportunity for hearing" as provided by Wis. Stat. § 196.50(2)(f) is applicable in this case, or if process is due to the current ETCs in the rural areas at issue on any other basis, the Notice Requesting Comments, dated February 19, 2004, satisfies this requirement. *Waste Management of Wisconsin v. DNR*, 128 Wis. 2d 59, 78, 381 N.W.2d 318 (1985). (An appropriate "opportunity for hearing" may be exclusively through written comments.)

### **Order**

1. ACC is granted ETC status in the nonrural wire centers indicated in its application; to the extent the wire centers are located within the state.

2. ACC is granted ETC status in the rural study areas for which it has requested such designation where the request includes the entire territory of a rural telephone company; to the extent the areas are located within the state.

3. ACC is granted ETC status in the areas for which it has requested such designation where the request does not include the entire territory of a rural telephone company, to the extent the areas are located within the state, conditioned upon the FCC approving the use of the smaller areas. ACC must request such FCC approval.

4. If the FCC does not approve the use of areas smaller than the entire territory of a rural telephone company when granting ETC status in those areas, then the conditional grant of ETC status in this order is void.

5. ACC shall not apply for state USF support. If it ever does file for such support, the state eligibility requirements for, and obligations of, ETC status shall immediately apply to it.

6. Subject to FCC approval where necessary, ACC is an ETC within the meaning of 47 U.S.C. § 214(e) and Wis. Admin. Code § PSC 160.13. This order constitutes the certification to this effect by the Commission. If the FCC does not approve the use of areas smaller than the entire territory of a rural telephone company when granting ETC status in those areas, then this certification of ETC status is void as to those areas.

7. The requests for a contested case hearing by CenturyTel, Inc., and TDS Telecommunications Corp., are rejected.

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8. Jurisdiction is maintained.

Dated at Madison, Wisconsin, June 18, 2004

By the Commission:

Lynda L. Dorr  
Lynda L. Dorr  
Secretary to the Commission

LLD:GAE:PRJ:slg:reb:g:\order\pending\8206-TI-100 Final. doc

See attached Notice of Appeal Rights



Notice of Appeal Rights

Notice is hereby given that a person aggrieved by the foregoing decision has the right to file a petition for judicial review as provided in Wis. Stat. § 227.53. The petition must be filed within 30 days after the date of mailing of this decision. That date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

Notice is further given that, if the foregoing decision is an order following a proceeding which is a contested case as defined in Wis. Stat. § 227.01(3), a person aggrieved by the order has the further right to file one petition for rehearing as provided in Wis. Stat. § 227.49. The petition must be filed within 20 days of the date of mailing of this decision.

If this decision is an order after rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not an option.

This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

Revised 9/28/98

APPENDIX A

This proceeding is not a contested case under Wis. Stat. ch. 227, therefore there are no parties to be listed or certified under Wis. Stat. § 227.47. However, the persons listed below participated.

Public Service Commission of Wisconsin  
(Not a party but must be served)  
610 North Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

American Cellular Corporation  
Reinhart Boerner Van Dueren S. C.  
by  
Peter L. Gardon  
P.O. Box 2018  
Madison, WI 53701-2018

TDS Telecommunications Corp.  
by  
Grant B. Spellmeyer  
P.O. Box 5158  
Madison, WI 53705-0158

Century Tel, Inc.  
Michael, Best & Friedrich, LLP  
by  
Jordan Hemaïdan  
P.O. Box 1806  
Madison, WI 53701

**ATTACHMENT 1****I. Non-rural Telephone Companies and Associated Wire Centers for Which ACC Seeks Unconditional ETC Designation**

Company Name	Wire Center Code
VERIZON NORTH INC.-WI	ANTGWIXA
	ATHNWIXA
	BRWDWIXA
	CLBYWIXA
	EDGRWIXA
	EGRWIXA
	HTLYWIXA
	LNLKWIXA
	LDUFWIXA
	LOYLWIXA
	MNCQWIXA
	MRFDWIXA
	MRRLWIXA
	MRTHWIXA
	MTONWIXA
	OWENWIXA
	PCKRWIXA
	PHLSWIXA
	SPNCWIXA
	SRFRWIXA
	SYNRWIXA
	THLKWIXA
	TMHKWIXA
	WAUSWIXA
	WAUSWIXB
	WAUSWIXC
	WHLKWIXA
WIS. BELL TEL. CO. a/k/a AMERITECH WI	CHFLWI11
	ELWOWI11
	EUCW101
	GNBYWI13
	MNMNWI11
	RVFLWI11
	STPTWI01

II. Rural Telephone Company Study Areas for Which ACC Seeks Unconditional ETC Designation

Study Area Code	Company Name
330844	BADGER TELECOM, INC.
330925	BAYLAND TEL CO
330850	BLOOMER TEL CO
330851	BONDUEL TEL CO
330855	BRUCE TEL CO, INC.
330959	CENTURYTEL - MW WI INC - THORP
330956	CENTURYTEL - NORTH WI
330860	CHEQUAMEGON TEL COOP
330861	CHIBARDUN TEL COOP
330863	CITIZENS TEL COOP
330879	FARMERS INDEPENDENT
330889	HAGER TELECOM, INC.
330936	INDIANHEAD TEL CO
330902	LUCK TEL CO
330909	MIDWAY TEL CO
330910	MILLTOWN MUTUAL TEL
330920	NIAGARA TEL CO
330937	PRICE COUNTY TEL CO
330940	RHINELANDER TEL (RHINLDR)
330941	RHINELANDER TEL (RIB LAKE)
330870	RHINELANDER TEL (CRANDON)
330891	RHINELANDER TEL (HEADWTR)
330949	SIREN TEL CO, INC.
330953	SPRING VALLEY TEL CO, INC.
330973	WITTENBERG TEL CO.

**ATTACHMENT 2****Rural Telephone Company Wire Centers for Which ACC Seeks Redefinition of the  
Service Area Requirement and Conditional ETC Designation**

<b>Company Name</b>	<b>Wire Center Code</b>	<b>Prior Order(s) Granting Redefinition</b>
AMERY TELCOM, INC.	AMRYWIXA CYTNWIXA DRPKWIXA	<i>ALLTEL Order</i>
AMHERST TEL CO	RSHTWIXA	<i>Metro Southwest Order</i>
BALDWIN TELECOM	BLDWWIXA WDVLWIXA	
CENTRAL STATE TEL CO	ABDLWIXA JNCYWIXA LNDSWIXA PTSVWIXA	<i>Metro Southwest Order</i>
CENTURYTEL – CENTRAL WI	AGSTWIXA ALCTWIXA CLGHWIXA FLCKWIXA FRCHWIXA MRLNWIXA NCHLWIXA OSSEWIXA SYMRWIXA	<i>ALLTEL Order, Brown County Order, Metro Southwest Order, Midwest Wireless Order, Nextel Partners Order, Nsighttel Order, Wisconsin RSA #10 Order</i>
CENTURYTEL – NW WI	BNNTWIXA DNBRWIXA DRLDWIXA FRDRWIXA GRDNWIXA LEWSWIXA LKNBWIXA MNNGWIXA OSCLWIXA PPLRWIXA SLSPWIXA WBLKWIXA WBSTWIXA	<i>ALLTEL Order, Nextel Partners Order</i>
CENTURYTEL – MW – KENDALL	ASLDWI01 BYFDWI11 CRNLWI12 HRLYWI11 LDYSWI11	<i>ALLTEL Order, Metro Southwest Order, Nsighttel Order, Wisconsin RSA # 3 Order, Wisconsin RSA #4 Order</i>

# APPENDIX B (cont.)

	MRNTWI01 OCFLWI11 OCNTWI11 PSHTWI11 SAXNWI11 SPRRWI11 SPRRWI12 SPRRWI13 STNLWI12 WSBNWI11	
CENTURYTEL – MW WI INC – CENCOM	AMBGWIXA CLMNWIXA CMLDWIXA CRVTWIXA GDMNWIXA HRMYWIXA LENAWIXA PMBNWIXA TWBRWIXA WASKWIXA	<i>Metro Southwest Order, Nextel Partners Order, Nsighttel Order, Wisconsin RSA # 3 Order</i>
CENTURYTEL – MW – WI INC NW	BOYDWIXA CDOTWIXA CHTKWIXA SPNRWIXA	<i>ALLTEL Order, Nextel Partners Order</i>
CENTURYTEL – MW WI INC – WAYSIDE	SHLKWIXA SARNWIXA TTLKWIXA	<i>ALLTEL Order, Brown County Order</i>
CLEAR LAKE TEL CO – WI	CLLKWIXA	
FRONTIER – MONDOVI	MNDVWIXA	<i>ALLTEL Order, Midwest Wireless Order</i>
FRONTIER – ST. CROIX	STPRWIXA	<i>ALLTEL Order</i>
FRONTIER – WISCONSIN	BWLRWIXA CECLWIXA CIVLWIXA GRHMWIXA KSHNWIXA MARNWIXA NEPTWIXA SHWNWIXA TGTNWIXA	<i>ALLTEL Order, Metro Southwest Order, Nsighttel Order, Wisconsin RSA #4 Order</i>
MOSINEE TEL CO	MOSNWIXA	<i>Metro Southwest Order</i>
NELSON TEL. COOP	ARKNWIXA DRNDWIXA	<i>US Cellular Order</i>

NORTHEAST TEL CO

KRKWWIXA  
MLCTWIXA  
PLSKWIXA

*ALLTEL Order, Brown County Order, Metro Southwest Order, Wisconsin RSA #4 Order*

TELEPHONE USA OF WI

BHWDWIXA  
BLLKWIXA  
BRRNWIXA  
BTRNWIXA  
BYVLWIXA  
CENTWIXA  
CLFXWIXA  
EKMDWIXA  
EMWDWIXA  
GLCYWIXA  
GLDNWIXA  
GLLTWIXA  
HYWRWIXA  
KNAPWIXA  
LAONWIXD  
LKWDWIXA  
MDRKWIXA  
MLLNWIXA  
PEPNWIXA  
PKFLWIXA  
PLCYWIXA  
PRSCWIXA  
RCLKWIXB  
SCFLWIXA  
SPBKWIXA  
SRLKWIXA  
SRNGWIXA  
STLKWIXA  
WABNWIXB  
WHLRWIXA  
WNTRWIXA

*ALLTEL Order, Metro Southwest Order, Midwest Wireless Order, Nsighttel Order, Wisconsin RSA # 3 Order, Wisconsin RSA #4 Order*

TRI - COUNTY TEL. COOP

ELEVWIXA  
STRMWIXA

W. WISCONSIN TELCOM

DSVLWIXA  
EKLKWIXB  
EKLKWIXC  
EUGLWIXA  
RCFLWIXA  
SPLKWIXA

*ALLTEL Order, Midwest Wireless Order*

**EXHIBIT B**

<b>Company Name</b>	<b>Wire Center Code</b>
AMERY TELCOM INC.	DRPKWIXA
AMHERST TELEPHONE CO.	RSHTWIXA
BALDWIN TELECOM, INC.	BLDWWIXA WDVLWIXA
CENTRAL STATE TELEPHONE CO.	ABDLWIXA JNCYWIXA LNDSWIXA PTSVWIXA
CENTURYTEL OF CENTRAL WISCONSIN, LLC	ALCTWIXA FRCHWIXA MRLNWIXA NCHLWIXA OSSEWIXA SYMRWIXA
CENTURYTEL OF NORTHWEST WISCONSIN, INC.	OSCLWIXA
CLEAR LAKE TELEPHONE CO., INC.	CLLKWIXA
FRONTIER COMMUNICATIONS OF MONDOVI, INC.	MNDVWIXA
FRONTIER COMMUNICATIONS OF ST. CROIX, INC.	STPRWIXA
FRONTIER COMMUNICATIONS OF WISCONSIN, INC.	CIVLWIXA MARNWIXA TGTNWIXA
MOSINEE TELEPHONE CO.	MOSNWIXA
NELSON TELEPHONE COOPERATIVE	ARKNWIXA DRNDWIXA
NORTHEAST TELEPHONE CO.	MLCTWIXA PLSKWIXA
TELEPHONE USA OF WISCONSIN, LLC	GLCYWIXA
TRI - COUNTY TELEPHONE COOPERATIVE, INC.	ELEVWIXA STRMWIXA
WEST WISCONSIN TELECOM	SPLKWIXA